Code. (App. 9-15.[1]) The proof showed under-reporting of income taxes of $22,551.74 in 1958, $14,053.49 in 1959, $9,258.80 in 1960 and $6,131.69 in 1961 (Tr. 2561-2569).

The sole question presented by the petition is whether, at the inception of an interrogation of a taxpayer not represented by counsel, who is under investigation for criminal tax fraud, a special agent of the Internal Revenue Service's Intelligence Division must give the taxpayer the warnings of constitutional rights prescribed in *Miranda* v. *Arizona*, 384 U.S. 436. Affirming the district court, the court below held (Pet. App. 18-19) that since petitioners were not in custody, nor otherwise deprived of their freedom in any significant way, at the time they made the incriminating admissions and turned over the incriminating records, the requirements of *Miranda* did not apply. This is in accordance with the rule in the Second Circuit (*United States* v. *Squeri*, 398 F. 2d 785, 788-790 (C.A. 2)) and in seven other circuits (*Morgan* v. *United States*, 377 F. 2d 507, 508 (C.A. 1); *United States* v. *Mancuso*, 378 F. 2d 612, 619 (C.A. 4), certiorari denied, 390 U.S. 955; *Agoranos* v. *United States*, 409 F. 2d 833, 835 (C.A. 5), certiorari denied, October 13, 1969 No. 163, this Term; *United States* v. *Maius*, 378 F. 2d 716, 718-719 (C.A. 6), certiorari denied, 389 U.S. 905; *Cohen* v. *United States*, 405 F. 2d 34 (C.A. 8), certiorari denied, 394

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[1] "App." references are to the printed Appendix filed in the court of appeals. "Tr." references are to the transcript of trial testimony. "Pet." and "Pet. App." references are to the petition for certiorari and the Appendix thereto, respectively.

U.S. 943; *Feichtmeir* v. *United States*, 389 F. 2d 498 (C.A. 9); *Hensley* v. *United States*, 406 F. 2d 481, 484 (C.A. 10)).

Petitioner contends (Pet. 7-14) that these holdings, including the one in the case at bar, are in conflict with (1) *Orozco* v. *Texas*, 394 U.S. 324; (2) *Mathis* v. *United States*, 391 U.S. 1; and (3) *United States* v. *Dickerson*, 413 F. 2d 1111 (C.A. 7).

(1) There is no conflict between this case and *Orozco* v. *Texas*, 394 U.S. 324, which was plainly a custody case. There one of the four police officers who questioned the defendant in his own home admitted that the defendant was "under arrest" at the time the incriminating statements were made and was not free to go where he pleased. The Court accordingly concluded that the suspect was "in custody" for *Miranda* purposes. It went out of its way in *Orozco* to say (394 U.S. at 327): "We do not, as the dissent implies, expand or extend to the slightest extent our *Miranda* decision."

(2) Neither is there a conflict with *Mathis* v. *United States*, 391 U.S. 1. There, too, the taxpayer was in actual custody at the time of the interrogation.

(3) We concede there is a conflict between this case and *United States* v. *Dickerson*, 413 F. 2d 1111 (C.A. 7), but we believe that the conflict is not viable. In *Dickerson*, a prosecution for wilful failure to file income tax returns, where the taxpayer had been given no warnings whatever by the special agent, the court upheld a suppression order on the ground that a taxpayer must be given *Miranda* warnings "at

the inception of the first contact with the taxpayer after the case has been transferred to the Intelligence Division" (p. 1117). In the instant case, where the taxpayers concededly were told at the outset of the special agent's interviews with them that they did not have to answer any questions or turn over any records (Pet. 5, 6), the court denied suppression on the grounds that the situation was not inherently coercive and that *Miranda* applies only to cases of custody or deprivation of freedom of action. But in *Dickerson* the court made its holding applicable only "to interrogations taking place after the date of this decision", July 28, 1969 (p. 1117). Thus, even if the *Dickerson* rule were applied to the case at bar the evidence would not be suppressible because it was turned over to the agents in 1962 and 1963.

In view of the purely prospective nature of the *Dickerson* holding and the present policy of the Internal Revenue Service to give virtually full *Miranda* warnings to all taxpayers when they are first interviewed by a special agent,[2] there should be few, if any, future cases which will meet a different fate in the Seventh Circuit than in any other circuit. See, *e.g.*, *Campione* v. *United States* (C.A. 7), pending on

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[2] By news release dated November 26, 1968, the Internal Revenue Service announced that henceforth a special agent on his first visit to a taxpayer must warn him of his constitutional rights, including the right to counsel, but not including the proffer of legal aid unless the taxpayer is in custody. The news release notes that this "new procedure goes beyond most legal requirements that are designed to advise persons of their rights." 1968 CCH Fed. Tax Reporter, par. 6946; 1968 Prentice-Hall Fed. Taxes, par. 55,476.

petition for certiorari, No. 876, this Term. The conflict, therefore, does not warrant further review by this Court.

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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